



May 21, 1999

Mr. Boyd Kennedy
Staff Attorney
Law Enforcement Division
Texas Parks & Wildlife
4200 Smith School Road
Austin, Texas 78744-3291

OR99-1462

Dear Mr. Kennedy:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124705.

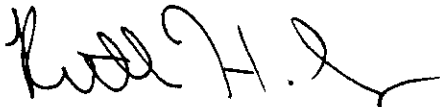
The Texas Department of Parks and Wildlife (the “department”) received an open records request for, among other things, “any assessments by [the department] of the performance of” Intertek Testing Services Environmental Laboratories, Inc. (“Intertek”). You explain that the department assisted various state and federal law-enforcement agencies in the execution of a search warrant served on Intertek and that a department employee who was present during the resulting search took handwritten notes that were later forwarded to the United States Environmental Protection Agency (the “EPA”). It is these notes that you believe arguably come within the ambit of the open records request. You contend the notes are excepted from required public disclosure pursuant to section 552.108 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” You explain that the EPA is conducting a criminal investigation of Intertek and has accordingly requested that the information at issue not be released to the public at this time. In Open Records Decision No. 340 (1982), this office concluded that records held by a governmental body may be withheld from the public pursuant to the “law-enforcement exception” where the records related to a pending federal criminal investigation. *See also* Open Records Decision Nos. 474 (1987), 372 (1983) (law-enforcement exception may be invoked by any proper custodian of

information which relates to criminal investigation). We therefore, conclude that the department may withhold the information at issue pursuant to section 552.108(a)(1).¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/eaf

Ref: ID# 124705

encl. Submitted documents

cc: Mr. John Gordon
KTBS TV Marshall Newsroom
Bank One Building
101 East Austin, #403
Marshall, Texas 75670
(w/o enclosures)

¹We note that there is some question as to whether you timely sought an open records decision from this office within the ten business days required by section 552.301 of the Government Code. Although you state that the department received the open records request on February 26, 1999, the fax transmission date on the request appears to reflect that the department received the request on February 25, 1999. This office did not receive your request for an opinion until March 12, 1999, which exceeds the statutory time period. Although a violation of the "ten day rule" results in the legal presumption that the requested information is public, Gov't Code § 552.302, this office has concluded that the law-enforcement interests of another entity constitute a "compelling need" that overrides the presumption of openness. *See* Open Records Decision No. 586 (1991).